



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of:       ACR Electronics, Inc.  
File:             B-232130.2, B-232130.3  
Date:             December 9, 1988

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### DIGEST

1. Contracting agency's decision to cancel a request for proposals for supplying batteries was reasonable where: (1) the solicitation contained an obsolete drawing with the incorrect dimensions that overstated the agency's minimum needs; and (2) the passage of many months in connection with lengthy negotiations and bid protest caused approximately one-third of the required quantity to be needed on an emergency basis, thus requiring an accelerated delivery schedule for that portion of the total requirement.
2. Protest alleging that the contracting agency improperly included another offeror's proposal in the competitive range is academic where the contracting agency properly canceled the original solicitation.

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### DECISION

ACR Electronics, Inc., protests cancellation of request for proposals (RFP) No. F41608-87-R-0738, issued by the Department of the Air Force for 88,495 batteries for use in beacon radios. The protester contends that the contracting officer unreasonably canceled the solicitation on the bases that: (1) a manufacturing drawing included in the solicitation erroneously contained the wrong dimensions; and (2) part of the total requirement had become urgent, requiring an expedited delivery schedule. The protester also contends that, before the RFP was canceled, the Air Force had improperly included another offeror's proposal in the competitive range and allowed that offeror to revise its initial proposal, even though ACR had submitted the only acceptable initial proposal. ACR argues that it should be awarded the contract under the original RFP, because it submitted the only proposal that was properly included in the competitive range.

We deny the protest.

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The solicitation was issued on October 20, 1987, and, as amended, required submission of initial proposals by February 1, 1988. Proposals were submitted by ACR and Mathews Associates, Inc. Mathews proposed to supply batteries with an operating life that was shorter than that required by the RFP. Mathews explained that this exception was necessary because it was unable to obtain the right size alkaline cell to use as a component of the battery. ACR offered to provide its own part number (ACR part No. A3-03-0052) instead of the Air Force part number specified in the RFP. An Air Force engineer determined that ACR's part No. A3-03-0052 had different dimensions than the battery specified in the RFP and, therefore, would not mate properly with the end product. The contracting officer determined that both offers were technically unacceptable, but that ACR's proposal was susceptible of being made acceptable.

Discussions were conducted with ACR alone on a number of issues, including price, cost and pricing data, waiver of first article testing, ACR's source for the alkaline cell component, and supplying the Air Force part instead of the ACR part. The negotiations continued through the end of June 1988. At that time, the contracting officer decided that, due to the considerable time that had passed, it was possible that Mathews would be able to obtain the alkaline cells necessary for the battery life to conform to the RFP's requirement. Therefore, the contracting officer concluded that discussions should be held with Mathews as its proposal was also susceptible of being made acceptable. The discussions with Mathews revealed that Mathews had discovered a supplier for the cells and that its proposal would be acceptable to the Air Force. Accordingly, the Air Force requested best and final offers (BAFOs) from both firms by letter of July 27.

ACR filed a protest in our Office on July 29, contending that the Air Force improperly allowed Mathews back into the competitive range and conducted discussions with that firm. On August 5, the Air Force canceled the solicitation on the basis that it contained an obsolete specification. On August 17, ACR filed a second protest with our Office contending that the cancellation was improper.

On August 31, a new solicitation for 33,853 batteries was issued to ACR and Mathews to fill what the Air Force determined had become an emergency need. A contract was awarded to Mathews pursuant to this emergency procurement on September 30. The Air Force reports that it intends to conduct another procurement for the remainder of its battery

requirements in the future and that both firms will be solicited for that requirement.

The first issue for our resolution is whether the cancellation of the original procurement was proper.

In a negotiated procurement, generally, contracting officials need only demonstrate a reasonable basis for cancellation after receipt of proposals, as opposed to the "cogent and compelling" reason required to cancel an invitation for bids where sealed bids have been opened. CooperVision, Inc., B-229920.2, Mar. 23, 1988, 88-1 CPD ¶ 301. The standards differ because in procurements using sealed bids, competitive positions are exposed as a result of the public opening of bids, while in negotiated procurements there is no public opening. Id.

Here, the Air Force determined that the manufacturing drawing included in the RFP was obsolete. The RFP originally included revision A to the relevant drawing, but a more current revision (revision B), increasing the dimensions required for both the length and the width of the batteries, should have been included. The Air Force argues that this relaxation of the specifications may result in an increase in competition and more accurately represents the Air Force's needs. The protester contends that the dimension changes were minor in nature and, because revision B actually allowed for a slightly larger battery to be supplied, a battery manufactured to the original specifications would also meet the revised specification. Thus, ACR charges that the Air Force's needs would have been met under either specification and, therefore, the Air Force had no need to cancel the original RFP.

The Air Force also argues that cancellation was justified because, due to the passage of time during which negotiations were conducted, approximately one-third of the total battery requirement became needed on an emergency basis, requiring delivery on a more accelerated schedule than called for by the RFP. The contracting officer concluded that additional discussions might be required to negotiate the optimal accelerated delivery schedule for the emergency portion of the total requirement, thus creating the impression of an auction through successive rounds of BAFOs. The Air Force also contends that the compressed delivery schedule will have a significant impact on both price and potential contractors' ability to perform. Accordingly, the contracting officer concluded that it would be best to split the total requirement into two procurements--an emergency procurement for 33,853 units and a future procurement for the remainder.

In our view, the decision to cancel was proper. First, the Air Force determined that the specifications were not accurate and did not represent the Air Force's actual needs. In essence, the original RFP overstated the agency's actual needs. In view of the fact that only two offers were submitted in response to the RFP, the Air Force decision to resolicit with relaxed specifications that more accurately describe the items needed and that may result in enhanced competition was reasonable. See CooperVision, Inc., B-229920.2, supra.

Second, the contracting officer learned that the delays in the procurement process, including those related to the lengthy negotiations and the initial protest to our Office, had resulted in an emergency need for a significant portion of the items. In this regard, the Air Force reports that the batteries operate emergency locator beacons that are used to locate downed crew members, and that the RFP advised from the outset that the total requirement was urgent; obviously, the passage of many months had made part of the requirement even more urgent. In our view, the Air Force's argument that an accelerated delivery schedule for the emergency portion of the total requirement will have a significant impact on price is reasonable. A compressed delivery schedule generally is more difficult to achieve and is likely to result in higher unit prices. It logically follows that the nonemergency portion of the entire battery requirement may result in lower unit prices and may attract more competition, because more time will be allowed for delivery, if this nonemergency requirement is procured independently from the emergency requirement. Accordingly, splitting the requirement in order to obtain a compressed delivery schedule for the Air Force's emergency needs, while attempting to obtain the broadest possible competition for the remaining needs, was reasonable.

In view of our finding that the Air Force properly canceled the original solicitation, the protester's allegation that the Air Force improperly included Mathew's proposal in the competitive range and conducted discussions with that firm is academic and will not be considered further. Mark's Movers and Storage, Inc., B-229945, Jan. 22, 1988, 88-1 CPD ¶ 64.

The protest is denied.

  
James F. Hinchman  
General Counsel